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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
YIGDALL, MICHAEL J	
ART UNIT	**PAPER NUMBER**
2122	

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/800,173	RADATTI, PETER V.	
	Examiner	Art Unit	
	Michael J. Yigdall	2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 March 2001 and 16 October 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 October 2001* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 1-21 have been examined. The date of priority considered for the application is 6 March 2001.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character 11 has been used to designate both the update manager and several steps of the process shown in Figs. 1-3. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 25 (see Fig. 4). A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6, 7, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said server" in line 2. There is insufficient antecedent basis for this limitation in the claim. The claim has been interpreted assuming --said distribution media-- to be the intended limitation.

Claim 9 recites the limitation "said server" in line 2. There is insufficient antecedent basis for this limitation in the claim. The claim has been interpreted assuming --said second distribution media-- to be the intended limitation.

Claims 7 and 10 are also rejected as being dependent on rejected base claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,151,708 to Pedrizetti et al.

With respect to claim 1, Pedrizetti et al. disclose an apparatus for transmitting data to a target (see the abstract) comprising:

(a) a means for updating, present on a distribution media, and further comprising data and data information (see Fig. 1 and column 1, lines 41-65, which shows a system for updating

software from a distribution server, comprising update data and information based on the update);

(b) a means for transmission between said distribution media and said target (see item 104 of Fig. 1 and column 2, lines 57-61, which shows a means for transmission between the server and client); and

(c) a means for processing said data information (see Fig. 3 and column 1, lines 48-59, which shows that the client processes the information to determine the availability of updates);

whereby said data information is transmitted through said means for transmission to said means for processing, which upon receipt of said data information compares said data information with said target in order to determine if said data should be transmitted to said target (see column 1, lines 48-59, which shows that the update data information is transferred to the client for processing and is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to claim 2, Pedrizetti et al. disclose an apparatus as in claim 1 wherein the means for updating on the distribution media further comprises a distribution hash means (see Fig. 4 and associated text, and column 1, lines 45-48, which shows a hash function used on the distribution server).

With respect to claim 3, Pedrizetti et al. disclose an apparatus as in claim 1 wherein the means for transmission of data at least partially comprises a network (see item 104 of Fig. 1 and column 2, lines 61-65, which shows that an Internet connection, i.e. a network connection, may be used).

With respect to claim 4, Pedrizetti et al. disclose an apparatus for transmitting data to a target (see the abstract) comprising:

(a) a means for updating, present on a distribution media, and further comprising data, data information and a hash of said data information (see Fig. 1 and column 1, lines 41-65, which shows a system for updating software from a distribution server, comprising update data, information based on the update, and a hash table based on the information);

(b) a means for transmission between said distribution media and said target (see item 104 of Fig. 1 and column 2, lines 57-61, which shows a means for transmission between the server and client);

(c) a means for obtaining data information from said distribution media (see column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server); and

(d) a means for processing said hash of said data information (see Fig. 5 and associated text, and column 1, lines 48-59, which shows that the client processes the information to determine the availability of updates);

whereby said means for obtaining data information from said distribution media obtains said hash from said means for updating present on said distribution media, which hash is transmitted through said means for transmission to said means for processing, and which upon receipt of said hash of said data information compares said hash with said target in order to determine if said data should be transmitted to said target (see column 1, lines 48-59, which shows that the hash table and the update data information is transferred to the client for

processing and is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to claim 5, Pedrizetti et al. disclose a method for transmitting data to a target (see the abstract) comprising the steps of:

(a) transmitting data information between a distribution media and said target (see column 1, lines 52-56, which shows the transmission of update data information from the distribution server to the client); and

(b) comparing said data information in order to determine if said data should be transmitted to said target (see column 1, lines 52-59, which shows that the update data information is compared to determine whether or not the actual update data should be transferred to the client as well).

With respect to claim 6, Pedrizetti et al. disclose a method as in claim 5 further comprising the step of obtaining data information from said server (see column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server).

With respect to claim 7, Pedrizetti et al. disclose a method as in claim 6 wherein the step of obtaining data information from said server further comprises the step of using an http address to obtain data information (see column 2, lines 61-65, which shows that an Internet connection may be used in conjunction with a Web browser for the software update system; see also Fig. 6A, which shows a Web browser using an http address).

With respect to claim 8, Pedrizetti et al. disclose a method for transmitting data to a target (see the abstract) comprising the steps of:

(a) transmitting a hash of data information from a first distribution media to said target (see column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client from the distribution server);

(b) comparing said hash in order to determine if data information should be transmitted to said target (see column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(c) transmitting said data information from a second distribution media, if necessary, to said target (see column 1, lines 52-56, which shows that update data information is transferred to the client if needed; see also column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used);

(d) comparing said data information with said target in order to determine if said data should be transmitted to said target (see column 1, lines 52-59, which shows that the update data information is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to claim 9, Pedrizetti et al. disclose a method as in claim 8 further comprising the step of obtaining data information from said server (see column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server).

With respect to claim 10, Pedrizetti et al. disclose a method as in claim 9 wherein the step of obtaining data information from said server further comprises the step of using an http address to obtain data information (see column 2, lines 61-65, which shows that an Internet connection may be used in conjunction with a Web browser for the software update system; see also Fig. 6A, which shows a Web browser using an http address);

With respect to claim 11, Pedrizetti et al. disclose a method as in claim 8, wherein the first and second distribution media are the same (see item 100 of Fig. 1, which shows the software update system using a single server);

With respect to claim 12, Pedrizetti et al. disclose a method as in claim 8, wherein either the first and second distribution media at least partially comprises a network (see column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to claim 13, Pedrizetti et al. disclose a method as in claim 8 further comprising the step of preparing said data information from attributes of said data (see column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data, such as version number and package name; note that the step of preparing the index file is inherent to the system).

With respect to claim 14, Pedrizetti et al. disclose a method as in claim 13 wherein said data comprises one or more software product data files (see column 1, lines 41-45, which shows that software program updates are transferred from the distribution server to the client).

With respect to claim 15, Pedrizetti et al. disclose a method as in claim 13 further comprising the step of preparing said hash from said data information (see column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to claim 16, Pedrizetti et al. disclose data information prepared by the method of claim 13 (see column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data).

With respect to claim 17, Pedrizetti et al. disclose a hash prepared by the method of claim 15 (see column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to claim 18, Pedrizetti et al. disclose a method as in claim 8 further comprising the steps of transmitting said data from a third distribution media to said target (see column 1, lines 56-59, which shows that update data is transferred to the client from the distribution server; see also column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used).

With respect to claim 19, Pedrizetti et al. disclose a method as in claim 18 wherein the third distribution media at least partially comprises a network (see column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to claim 20, Pedrizetti et al. disclose a method as in claim 19 further comprising the step of editing data on said target in order to update data on said target (see column 3, lines 29-41, which shows that data on the client is edited and updated).

With respect to claim 21, Pedrizetti et al. disclose a method for transmitting data to a target (see the abstract) comprising the steps of:

(a) providing a software product (see column 1, lines 41-45, which shows that software program updates are provided on a server);

(b) preparing data information about said software product (see column 5, lines 50-60, which shows an index file having information based on the software update; note that the step of preparing the index file is inherent to the system);

(c) preparing a hash of data information about said software product (see column 1, lines 45-48, which shows a hash table prepared from the update data information);

(d) storing said software product on a first distribution media (see item 114 of Fig. 1, which shows the software program update data stored on a server);

(e) storing said data information on a second distribution media (see column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used for storage);

(f) storing said hash of data information on a third distribution media (see column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used for storage);

(g) obtaining data information about said software product (see column 1, lines 52-56, which shows that information about the software updates is obtained by the client);

(h) transmitting said hash of data information to said target (see column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client);

(i) comparing said hash in order to determine if data information should be transmitted to said target (see column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(j) transmitting said data information, if necessary, to said target (see column 1, lines 52-56, which shows that update data information is transferred to the client if needed);

(k) comparing said data information with said target in order to determine if said data should be transmitted to said target (see column 1, lines 52-59, which shows that the update data

information is compared with the client to determine whether or not the actual update data should be transferred as well);

(l) transmitting said data, if necessary, to said target (see column 1, lines 56-59, which shows that update data is transferred to the client if needed); and

(m) editing said data on said target in order to update data on said target (see column 3, lines 29-41, which shows that data on the client is edited and updated).

8. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,950,205 to Aviani.

These claims are statutory only because they depend (indirectly) from claim 8, which is statutory. If these claims were to be considered independent claims, they would be non-statutory under 35 U.S.C. 101 as claiming data per se. Furthermore, claims 16 and 17 are product-by-process claims for which patentability is determined based on the product itself and not on the method of production. See MPEP § 2113.

With respect to claim 16, Aviani discloses data information (see column 6, lines 1-5, which shows information based on the properties of a file, i.e. data information).

With respect to claim 17, Aviani discloses a hash (see column 6, lines 17-19).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Pat. No. 6,526,574 to Jones discloses a system for building patch files to update software based on the differences between two versions. U.S. Pat. No. 6,493,871 to McGuire et al. discloses a system for downloading files needed to update software. U.S. Pat. No. 5,999,740 to Rowley discloses a system for retrieving software updates from a remote file server.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (703) 305-0352. The examiner can normally be reached on Monday through Friday from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

MY

Michael J. Yigdall
Examiner
Art Unit 2122

mjy
September 26, 2003

TUAN DAM
SUPERVISORY PATENT EXAMINER